

AMENDED IN SENATE MARCH 25, 2008

SENATE BILL

No. 1642

Introduced by Senator Yee

February 22, 2008

An act to add Section 9204 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1642, as amended, Yee. Public contracts: claims.

Existing law authorizes a public entity to compromise or otherwise settle any 3rd-party claim relating to a public works contract.

This bill would define "claim" for those purposes to mean a written demand or assertion by a contractor or public entity or other relief with respect to the contract documents, as specified.

This bill would provide for a mediation process and binding arbitration process for claim disputes between a contractor and public entity, charter city, or charter county which does not have an alternative dispute process, if those claims remain unresolved after a specified time period. This bill would authorize, if either party is required to initiate a civil action in which to enforce the rights provided under these provisions, reasonable attorney fees and costs to the prevailing party.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 9204 is added to the Public Contract
- 2 Code, to read:

9204. (a) For purposes of this article, “claim” means a written demand or assertion by a contractor or public entity including change orders seeking an adjustment or interpretation of the terms of the contract documents, payment of money, extension of time, or other relief with respect to the contract documents, including a determination of disputes or matters in question between the public entity and contractor arising out of or related to the contract documents of the performance of the work.

(b) (1) *This subdivision shall apply to any public entity, charter city, or charter county which does not have an alternative dispute process provided for by contract.*

(2) *Upon submission of a claim, the applicable public entity, charter city, charter county, or contractor shall review the claim and make a determination within a 30-day period as to what portion of the claim, if any, is undisputed and shall satisfy that portion of the claim. If the public entity, charter city, or charter county requests additional information to analyze the claim or any portion thereof, it shall submit a request for information within 30 days of the date on which it first receives the claim. Once a public entity, charter city, or charter county has received additional information, it shall have an additional 30 day period in which to satisfy any undisputed portion of the claim, and to identify those portions of the claim which it disputes. The maximum amount of time the public entity, charter city, or charter county may request additional information is 90 days from the date of the first submission of the claim.*

(3) *In the event there is any portion of a claim that remains unresolved, the party who submitted the claim, at its discretion, may demand mediation with the parties mutually agreeing to a mediator within 30 days from the date of the demand for mediation. If the parties are not able to mutually agree on a mediator, the parties shall utilize the American Arbitration Association to assist in the selection of a mediator.*

(4) *If any portion of the claim remains unsettled after mediation, the contractor and the public entity, charter city, or charter county shall submit the dispute to binding arbitration, and shall follow the same procedure for selecting an arbitrator as set forth in paragraph (3) for the selection of a mediator.*

(c) *Failure by the public entity, charter city, or charter county to respond to a claim within the time periods set forth in*

1 *subdivision (b) shall result in the claim deemed being approved*
2 *in its entirety, and shall be processed for payment within five days*
3 *from the expiration of the time period in which the public entity,*
4 *charter city, or charter county is required to act. Failure by the*
5 *contractor to respond to said claim from the public entity, charter*
6 *city, or charter county within the time periods prescribed in*
7 *subdivision (b) shall result in the claim being denied. The parties*
8 *may extend this time period by mutual agreement.*
9 *(d) If either party is required to initiate a civil action in which*
10 *to enforce the rights provided under this section, the prevailing*
11 *party shall be entitled to its reasonable attorney fees and costs.*